BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY A. BECKNER	)	
Claimant	)	
VS.	)	
	)	Docket No. 234,591
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF-INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on May 12, 1999.

ISSUES

The Administrative Law Judge awarded medical treatment benefits. Respondent appeals that order based on the contention that the accident report of August 12, 1996 does not constitute written claim. Whether claimant made a timely written claim for compensation is the only issue for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

The issue raised on appeal, whether claimant made timely written claim, is a jurisdictional issue subject to review by the Appeals Board.[1]

Claimant was injured on July 2, 1996 when she struck her head while entering her vehicle. She reported the injury to her supervisor, Ted Harvey, the next day. She did not seek medical treatment immediately. Later she went to a chiropractor on her own but did not get relief from her symptoms. Claimant determined that she was in need of additional medical treatment and she therefore contacted her director of personnel, Susan Warner, to make a claim for workers compensation benefits. Ms. Warner presented her with a form to fill out. The form she was given, Respondent's Exhibit 2, was a form K-WC 1101-A Employers Report of Accident provided by the Kansas Division of Workers Compensation. Claimant testified that she thought this accident report form was given to her for the purpose of making a claim for workers compensation benefits and that by filling it out as instructed she had completed the requirements necessary to seek workers compensation benefits.

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[1] K.S.A. 1998 Supp. 44-534a; K.S.A. 1998 Supp. 44-551.

As a result of claimant completing that form, she was referred by respondent to Dr. Chris D. Fevurly for treatment. Thereafter, on August 23, 1996 respondent terminated medical treatment due to an alleged failure to provide timely notice.[2] Claimant did not seek any further authorized treatment and did not submit anything else which might be considered a written claim until her Application for Hearing on June 30, 1998, more than 200 days and also more than one year after the last compensation (medical treatment) was provided. Therefore, if the document completed in August 1996 was not a timely claim, claimant has not made a timely written claim as required by K.S.A. 44-520a.

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[2] On August 23, 1996, claimant was sent a letter, Respondent's Exhibit 1, on official State of Kansas stationery. The letterhead bears the Governor's name and the State seal. This letter, signed by Doug Hollandsworth, State Self Insurance Fund, reads as follows:

> An accident report has been submitted by your employer as this office manages workers' compensation claims made by state employees.
>
> The Workers' Compensation Act provides certain benefits for injuries which arise out of and in the course of your employment with the state. This means that an injury must have occurred at a time while at work and specifically caused by a condition or factor of your work and reported to your employer with in the time limits set by law.
>
> The Workers Compensation Act is very specific about the reporting of accidents. An accident must be reported to the employer with in 10 days of its occurrence. From the information I've obtained the first your employer knew of your injury was August 12, 1996. This is well past the 10 day notification requirement.
>
> Under the circumstances, your situation is not covered under the provisions of the Workers' Compensation Act.

No reference was made to the fact that K.S.A. 44-520 also provides that:

> The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

This letter was apparently sent with little or no investigation because it is now undisputed that claimant did give notice of accident to her supervisor the day after it happened. While there is no allegation that respondent sent this letter with any intent to deceive or mislead claimant (see K.S.A. 44-5,120), such a letter could result in a claimant deciding not to pursue a legitimate claim. In this case, after receiving the letter, claimant did decide to seek medical treatment on her own rather than from her employer. But while the letter was introduced into evidence, it has not been argued that it caused claimant to delay making her claim. It is being mentioned now to avoid such a misfortune. A letter on the official letterhead of the State's executive branch, which, therefore, is from a part of the same branch of government charged with the responsibility for administering the State's workers compensation law, should take care to provide complete information when purporting to advise or pronounce what that law provides.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it. Craig v. Electrolux Corporation, 212 Kan. 75, 82, 510 P.2d 138 (1973). The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520. Pike v. Gas Service Co., 223 Kan. 408, 573 P.2d 1055 (1978). Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 166, 309 P.2d 681 (1957), the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The accident report form claimant completed in August 1996 contained a description of the accident and injury. Certainly it satisfied the purpose of allowing respondent the opportunity to investigate. That the claimant intended by this form to ask for compensation is uncontroverted. Claimant testified that when she completed the paperwork given to her by the personnel director, she believed she was doing all that was necessary for workers compensation. That she would think so is not surprising in light of the fact she, at the same time, was being referred for the workers compensation benefit of medical treatment.

Respondent argues that because the document claimant completed was an Employers Report of Accident form, the Board cannot consider it for the purpose of written claim. K.S.A. 44-557 sets forth the circumstances under which an employer is required to file a report of accident. To encourage compliance with this requirement, a report form is provided by the Division of Workers Compensation and, under certain circumstances, the Act affords an employer certain protections for statements it makes in that report.[3] For this reason, the Employers Report of Accident form is not intended to be and should not be used as a substitute for a claim form. It is also not intended for use as an internal incident report. Giving an employee an Employers Report of Accident form to fill out as a method of requesting workers compensation benefits is a misuse of the Division's report form. The writings claimant made on that form are not protected or barred from evidence by K.S.A. 44-557(b). But looking beyond the four corners of that exhibit, claimant testified to making a writing at the request of a supervisor as part of making a claim for workers compensation. She further testified that this was done within 200 days of her accident. Her testimony is uncontroverted. This testimony, standing alone, satisfies claimant's burden even without introducing the actual document.

The Appeals Board concludes the document claimant signed in August 1996 should be treated as a written claim and written claim was, therefore, timely.

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[3] K.S.A. 44-557(b).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on May 12, 1999 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: Terry E. Beck, Topeka, KS
Marcia L. Yates, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director